

Synopsis of the criminal opinions by the Mississippi Court of Appeals on April 15, 2008.

Williams v. State, No. 2007-KA-00143-COA (Miss.App. April 15, 2008)

CRIME: Burglary of a Building and Grand Larceny (habitual offender)

DECISION: Affirmed

COUNTY: DeSoto

MAJORITY: Roberts (Irving concurs in result only)

FACTS: Curtis Lee Williams was convicted of burglary of a building and grand larceny, and was sentenced to 12 years without parole. On January 14, 2000, Tiffany Tennis was asleep when she heard a car door close in her driveway. She looked outside and saw a white early 1990s model Buick Regal with Arkansas plates. Two men got out of the car. Tiffany went downstairs and looked out her kitchen window. She saw one man, the passenger, go into a storage shed under her carport. Tiffany went outside onto her back porch. When she went to the end of her steps, she ended up face-to-face with one of the men as he exited the shed. The man had various tools in his arms. The man ran to the car, threw the tools in the trunk, and got in the passenger side of the car. The two men fled. Tiffany called police and gave them the license number to the car. The car had been stolen. The next day, police were called to a location near Horn Lake where two black males were stripping what appeared to be an abandoned car – a white four door 1991 Buick Regal with Arkansas plates. When the two men fled when they saw police. Police spent about an hour and twenty minutes looking for the two men. One man escaped. The other man, Williams, was found lying in a ditch. He had a broken leg. Tiffany identified Williams from a photo line-up as one of the men at her house.

HELD: The evidence was sufficient to support the verdict. This issue is procedurally barred, as defense counsel did not specifically state how the prosecution failed to present a prima facie case in his JNOV motion. Regardless, Williams claims the value of the tools was never established. The victim testified that one seven-piece socket set was newly purchased and cost \$150. Based on the victim's testimony regarding the remainder of the stolen items, a jury could reasonably infer that the tools had a fair market value greater than \$100, for a total of over \$250.

==>The photo line-up was not impermissibly suggestive. Williams claimed the lineup was suggestive because two of the six pictures included a linear height measurement in the background and those measurements indicated that those individuals were significantly taller than Williams's description. However, the victim saw two people burglarize her shed. She described one person as 6'1" to 6'3" and the other as 5'6" to 5'8." The photographic lineup would be much more suggestive if it did not contain pictures of people that fit the description of both people that the victim saw.

==>The line-up was not suggestive because of the backgrounds in the pictures. Nothing about the background of the pictures singles out Williams. The victim also identified Williams at trial. Even if the picture of Williams was slightly suggestive, it was not so suggestive that it gave rise to the likelihood of irreparable misidentification.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/Opinions/CO47506.pdf>

Jones v. State, No. 2006-KA-01994-COA (Miss.App. April 15, 2008)

CRIME: Armed Robbery (habitual offender)

DECISION: Affirmed

COUNTY: Rankin

MAJORITY: Ishee

FACTS: Gregory Deon Jones was convicted of armed robbery, and was sentenced to life without parole. On February 5, 2005, a man entered the Super Saver Exxon station Pearl. He purchased a cup of coffee and then exited the store. He re-entered about five minutes later, pulled a knife on the store clerk, demanded that she open the cash register, robbed the store of \$248, and fled. The store clerk who gave a detailed description of the robber. After viewing the tape of the robbery, police were able to identify Jones as a possible suspect. A photographic lineup which included Jones and five other males with similar physical characteristics was shown to the store clerk. She identified Jones. A warrant was issued for Jones's arrest. The next day, Jones was spotted by Jackson police at an Exxon gas station in Jackson. After watching him for a couple of minutes, the detectives approached Jones, who immediately took off running. The detectives pursued Jones around a fence behind the Exxon station to the rear parking lot of the Hilton Hotel on County Line Road. While police were in pursuit, they observed Jones twice reach into his pocket and discard what appeared to be a weapon. Jones was apprehended inside of the Hilton Hotel. He was wearing the same shirt as identified by the store clerk and visible in the surveillance footage. Police recovered a knife from the area where Jones was seen discarding it. The knife was later identified by the store clerk as the knife that was used in the robbery. MOIA filed a *Lindsey* brief on appeal. Jones filed a supplemental pro se brief.

HELD: Jones claimed that his motion to suppress the evidence should have been granted because the evidence was the product of an unlawful arrest. If Jones ever obtained a ruling on the motion from the trial court, the ruling is not apparent from the record on appeal. By failing to pursue a ruling on the motion from the trial court or by not objecting to the admission of the evidence, Jones abandoned the motion and waived this issue for appeal.

==>Jones's arrest was based on probable cause and a valid arrest warrant. There was ample evidence to support that probable cause existed for Jones's arrest without a warrant. In a photographic lineup that included five other individuals, the store clerk identified Jones as the armed robber. The store clerk's positive identification was sufficient in itself to provide the police with reasonable grounds to suspect that Jones committed the crime.

==>The photo line-up was not impermissibly suggestive. Jones claimed his picture was 11 years old. He further points out that he is the only individual wearing a coat, which happened to be included in the store clerk's description of the robber. The minor differences in the appearance of

Jones's photograph are not so distinctive as to improperly single him out. All photographs used in the lineup had the same format. They each contained the same background and were marked with "Jackson Police Department." The fact that Jones is the only individual wearing a coat is a minor difference.

==>Jones's indictment was not fatally defective because it incorrectly stated the date of the robbery. The indictment was amended to change the date from March 5, 2005 to February 5, 2005. An amendment to change the date on which the offense occurred is one of form only, unless time is an essential element or factor in the crime. Time was not an essential element or factor in the armed robbery allegedly committed by Jones. Jones never filed an alibi defense.

==>The trial judge did not err in failing to grant a mistrial when the jury was deadlocked. It is apparent that the jury was not in a hopeless deadlock, but was split 11-1. Under the circumstances, there is no evidence that the trial judge abused his discretion by sending the jurors home for the night and requiring them to resume deliberations the next morning.

==>The evidence was sufficient to support the verdict. The State was able to present eyewitness testimony of the armed robbery and a positive identification of Jones as the perpetrator. His description on the day after the robbery matched that given to police by the store clerk, and upon apprehending Jones, police recovered the knife later identified as the weapon used in the armed robbery. Furthermore, to the degree possible, the testimony of the store clerk was consistent with the evidence in the surveillance tape and photographs.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/Opinions/CO45898.pdf>

Jones v. State, No. 2006-KA-01243-COA (Miss.App. April 15, 2008)

CRIME: Sexual Battery

DECISION: Affirmed

COUNTY: Jones

MAJORITY: Barnes

FACTS: Joseph Glenn Jones was convicted of sexual battery of a minor at least 14 but under 16 years of age. He was sentenced to 30 years with 15 years to serve. During the early part of 2000, police received a complaint concerning a 13 year-old girl, Susie, having sex with an older man, Jones. Police obtained Susie's medical records and determined that Susie had given birth to a premature, stillborn child. However, due to a lack of physical evidence, the case was put on hold. The investigation was revived in 2004, and it was discovered that a slide containing a sample of tissue from Susie's baby was stored at the hospital. The sample was obtained for DNA testing. A drink can reportedly used by Jones was also obtained for DNA testing. Susie testified that when she was 13, she began having sex with Jones. She stated that one day she was walking from a friend's house when Jones drove up to her and asked her if she wanted a ride. The two subsequently began

having sex and did so on more than one occasion. Susie testified that on or about July 30, 1999, she discovered that she was pregnant. Susie stated that her birthday was August 5, 1985, and that she was 13 on July 30, 1999. She further testified that on December 27, 1999, when she was 14 years old, she gave birth to a stillborn child. Her medical records (copies of which were of poor quality) indicated the stillborn child was 22 weeks old. A forensic DNA analyst testified that she performed the lab work regarding the paternity of Susie's baby. The results of the analysis showed that half of the baby's DNA matched Jones's DNA. She stated that she had also performed a prior DNA test on the drink can reportedly used by Jones, and the results were the same as those obtained using Jones's blood. A second, independent DNA test confirmed the first test. There was a 99.97% probability that Jones was not excluded as the father of Susie's baby.

HELD: Jones claimed all the evidence indicated that the victim was 13 years old, so the State failed to prove the age of the victim. While significant evidence was presented at trial indicating that the victim was 13 when Jones impregnated her, both the weight and sufficiency of the evidence were sufficient for the jury to convict Jones of sexual battery a 14 year old. According to the victim and portions of her medical records, the baby was born on December 27, 1999, at the approximate age of 22 weeks. The victim turned 14 years old on August 5, 1999. Because of the closeness in time of her 14th birthday and the estimated date of conception (approximately a week to 10 days), the jury could have found that she was 14 at the time the baby was conceived.

==>The trial judge did not err in dismissing Juror Dantzler after another juror told the court she heard a group of people rejoicing that Juror Dantzler was selected. They expressed hope that Dantzler would hang the jury. Although the court refused to allow defense counsel to question Dantzler, counsel did not object to replacing Dantzler with an alternative. The failure to make a contemporaneous objection serves as a waiver of any error.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/Opinions/CO47225.pdf>

Page v. State, No. 2007-KA-00334-COA (Miss.App. April 15, 2008)

CRIME: Murder (habitual offender)

DECISION: Affirmed

COUNTY: Forrest

MAJORITY: Barnes

FACTS: Antonio Page was convicted of the murder of his sister, Cynthia Page, and was sentenced to life without parole. On August 30, 2005, one day after Hurricane Katrina, Page was at his grandmother's house, along with his sister, Cynthia, and numerous other family members. Page began drinking alcohol at approximately nine o'clock in the morning and drank throughout the day. Fred Burns contacted Cynthia later in the day and told her that he needed the children to come to his house and help clean debris from the yard. When the children later complained of thirst, Burns called Cynthia and told her that he and the children were going to go get some ice. Burns returned

two or three hours later with no ice, and an argument commenced between Burns and Page. As Burns and the children drove off, Page ran up to the driver's side window of the truck and threw the beer bottle through the window, causing glass to shatter all over Burns and the children in the back seat. Burns returned a short time later with a gun determined to kill Page. His daughter asked him not to kill Page, and while hesitating, Page attacked him. Burns hit him on the head with the gun twice. Page finally fled. Although the gun fired, no one was hit. Burns slashed the tires on Page's van and left. As a result of the blows, Page was bleeding from his head, nose, and mouth, but refused medical attention. Page left in his damaged van but later returned. He approached Cynthia, who was sitting in a lawn chair in the yard, and shot her in the head at point blank range. Cynthia had no weapon and said nothing to Page prior to his shooting her.

HELD: The record was insufficient to find Page was denied effective assistance of counsel. Page claimed his attorney failed to investigate whether the blows to his head resulted in a mental or psychological condition which caused him to shoot his sister. First, Page relies on a Johns Hopkins Family Health Book for the proposition that a blow to the head can cause brain injuries which can cause, inter alia, behavioral changes. This book does not appear in the record and can not be considered. Second, the mere fact that there was no evidence presented at trial regarding Page's mental or psychological state does not mean Page's counsel did not investigate the issue. Page's unsubstantiated allegations that his counsel failed to investigate his supposed impaired mental state are inadequate. Page can pursue the issue again in PCR.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/Opinions/CO47390.pdf>

Roncali v. State, No. 2006-KA-01224-COA (Miss.App. April 15, 2008)

CRIME: Simple Assault on a LEO

DECISION: Affirmed

COUNTY: Sunflower

MAJORITY: Irving

FACTS: Steve Roncali was convicted of simple assault on a law enforcement officer and was sentenced to 5 years. On December 16, 2005, Deputy Hezzie Murray of the Sunflower County Sheriff's Department was traveling on Highway 82 when he noticed a vehicle speeding and weaving in and out of traffic. Deputy Murray pulled the vehicle over. He asked the driver, Roncali, to produce his driver's license. Roncali informed the deputy that his license had been suspended and that he did not have car insurance. According to Murray, Roncali aimlessly moved his right leg and arm while he was speaking with him. Murray then noticed what appeared to be methamphetamine in Roncali's right hand. Murray attempted to retrieve the substance by reaching into the vehicle. As he did so, Roncali punched him in the stomach, knocking the wind out of him. While Deputy Murray was recovering from the blow to his stomach, Roncali swallowed the substance. Murray called for backup and attempted to place Roncali under arrest, but Roncali resisted and the two began to wrestle. Shortly thereafter, another deputy arrived and handcuffed Roncali. Roncali was tried for

possession of amphetamine and simple assault on a LEO. He was only convicted of simple assault on a LEO as the jury was unable to reach a unanimous verdict on the charge of possession of amphetamine.

HELD: The trial judge did not err in rejecting defense counsel's race neutral reason for striking a white juror. Roncali's attorney claimed that juror number one looked away from her when she asked him whether he could be fair and impartial. The State and the court disputed that. There is no evidence to contradict the judge's finding that the reason was not race neutral.

==>Roncali was not subjected to double jeopardy because he was also charged with resisting arrest. A clear reading of the statutes establishes that the two offenses contain an element that is lacking from the other. To convict of resisting arrest, the State must show that either the defendant or someone else was actually being arrested at the time of the offense. However, to convict of simple assault upon a LEO, the State must prove that the defendant attempted to cause bodily injury or in fact purposely, knowingly, or recklessly caused the officer to suffer bodily injury.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/Opinions/CO47516.pdf>

Jones v. State, No. 2007-CP-00260-COA (Miss.App. April 15, 2008)

CRIME: PCR – Possession of MDMA

DECISION: Denial of PCR affirmed

COUNTY: Lowndes

MAJORITY: Ishee

FACTS: Daniel Lewis Jones pled guilty in 2003 to one count of possession of MDMA. In exchange, the State recommended that a charge of possession of oxycodone and another unrelated charge be retired to the files. The court followed the State's recommendation and sentenced Jones to 8 years. Jones subsequently filed a PCR which was denied. He appealed.

HELD: Jones claimed that his sentence was illegal because the State should not have been allowed to amend the indictment against him to charge him as a habitual offender. The record indicates that the State filed its motion to amend the indictment in May of 2004. However, the State's motion was not granted until November 2004, almost six months later. This interval was sufficient time for Jones to file a motion in opposition or, in the alternative, to prepare to oppose the motion.

==>Jones was not denied effective assistance of counsel. Jones cannot demonstrate that, in allowing the State to amend the indictment, the performance of his counsel was deficient. Jones received a favorable recommendation from the State in exchange for his plea.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/Opinions/CO46674.pdf>

Guinn v. State, No. 2007-CP-00518-COA (Miss.App. April 15, 2008)

CRIME: PCR – Possession of Cocaine

DECISION: Denial of PCR affirmed

COUNTY: Claiborne

MAJORITY: Ishee

FACTS: Terrance Guinn pled guilty in January of 2007 to possession of cocaine and was sentenced to 3 years. Guinn subsequently filed a PCR which was denied. He appealed.

HELD: Guinn claimed that the circuit court lacked subject matter jurisdiction over his case because § 41-29-139, which is part of Mississippi's version of the Uniform Controlled Substances Law, was never properly enacted by the Legislature. Guinn apparently wrongly believes that the Uniform Controlled Substances Law is federal administrative law. There is nothing to indicate that the passage of the Uniform Controlled Substances Law in this state was deficient. There is no evidence in the record to show Guinn's plea was involuntary or that he received ineffective assistance of counsel.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/Opinions/CO45897.pdf>

Busby v. State, No. 2006-CP-01483-COA (Miss.App. April 15, 2008)

CRIME: PCR – Lustful Touching of a Minor

DECISION: Denial of PCR affirmed

COUNTY: Clarke

MAJORITY: King (Roberts not participating)

FACTS: David Claude Busby pled guilty in March of 2005 to lustful touching of a minor, and was sentenced to 15 years with 8 suspended, and 5 years supervised probation. He subsequently filed a PCR which was denied. He appealed

HELD: Busby was not denied effective assistance of counsel. Busby claimed his trial counsel failed to inform him of all parts of his plea agreement. Busby fails to show how his counsel's performance was ineffective and how this prejudiced his defense. It is clear from the guilty plea petition and the transcript of the guilty plea proceedings that counsel provided competent and reasonable professional assistance during all stages of the guilty plea proceedings.

==>Busby's plea was voluntary. The record shows that Busby signed and filed a petition to enter a guilty plea, which advised him of his legal and constitutional rights and the consequences of the plea. The trial court found that Busby knowingly and voluntarily waived his rights to trial. There is no evidence in the record that Busby's plea was induced by coercion. Apparently the only dispute was Busby's misunderstanding that he would not have to go into custody immediately after the plea.

When told he would have to go to jail, he stated it did not change his mind about pleading.

==>Busby was not entitled to an evidentiary hearing.

==>For the first time on appeal, Busby claimed that there was not an adequate factual basis to accept his guilty plea. The failure to bring this issue in the motion for post-conviction relief, bars it from being raised as a new ground on appeal.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/Opinions/CO47497.pdf>

Also of Note:

In the Interest of R.D.W., a Minor Child v. Natchez-Adams School District, No. 2006-CP-00804-COA (Miss.App. April 15, 2008)

CRIME: Youth Court

DECISION: Affirmed

COUNTY: Adams

MAJORITY: Irving

FACTS: On December 6, 2005, 9th grader RDW was suspended from Natchez High School for referring to an assistant principal in derogatory terms and for refusing to comply with requests of school officials. The disturbance resulted in RDW being arrested by police. A due process hearing was held wherein RDW was expelled for one calendar year. The Board of Trustees for the Natchez-Adams School District reduced the period of expulsion to the remainder of the 2005-2006 school year and allowed RDW to attend Central Alternative School at the beginning of the 2006-2007 school year. RDW was adjudicated a delinquent by the Adams County Youth Court. RDW subsequently filed a motion with the Adams County Youth Court in which he requested that the court modify its order adjudicating him a delinquent and order the Natchez-Adams School District to allow him to return to Natchez High School. The court held that RDW's request to modify the school board's finding was moot and that the court lacked jurisdiction to enter an order altering his placement at Central Alternative School, and that the court did not have jurisdiction to alter or amend its prior order as RDW failed to timely appeal the court's finding.

HELD: The youth court did not err in refusing to order RDW's transfer to Natchez High School. While § 43-21-621(1) empowers a youth court to order a state-supported public school within its jurisdiction to enroll or reenroll any compulsory-school-age child in school, the statute does not grant to the youth court the power to designate the specific school in which the child is to be enrolled. In fact, the statute is clear that that determination is to be made by the school district superintendent.

==>RDW was not denied his due process and equal protection rights when the youth court failed to amend its order adjudicating him a delinquent. Because RDW did not appeal the court's decision,

the court lacked jurisdiction to modify its order.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/Opinions/CO46648.pdf>

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